90-648

No. _____

In The

Supreme Court of the United States

October Term, 1990

CLAUDE RODRIGUEZ,

Petitioner,

v.

GENERAL MOTORS CORPORATION, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETER F. LAURA
LAW OFFICES OF LEROY S. WALKER
6300 Wilshire Boulevard, Suite 1455
Los Angeles, California 90048
(213) 658-5943

Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

The employee was denied a promotion and then protested the decision. He was then retaliatorily demoted. The issues presented are:

1. Did the denial of promotion constitute a violation of 42 U.S.C. Section 1981 under this Court's analysis in *Patterson v. McClean Credit Union*, 439 U.S. ___, 109 S.Ct. 2363, 105 L.Ed.2d 132 (1989).

2. Did the demotion constitute a violation of 42 U.S.C. Section 1981 under the *Patterson* case.

3. Did the demotion constitute a violation of the enforcement clause of 42 U.S.C. Section 1981 under the *Patterson* case.

LIST OF PARTIES

The parties not listed in the caption are Plaintiff Leroy E. Gibbs (who is not a petitioner), and Respondents David Herriett; Marlin Hess; Kenneth Bridges; K.C. Beck; Dennis Heineman; Richard Conrad; Robert Weatherly; C.L. Holloway; Donald Neu; James E. Clark; Robert Sutton; Ernest Schaefer; Steve Geiger; Walter Henry, M.D.; Robert McGee; Daniel D. Olsen; John Lechtenberg; and Richard King.

TABLE OF CONTENTS

TABLE OF CITATIONS

Page

CASES

TABLE OF CITATIONS – continued

STATEMENT OF JURISDICTION

The decision of the Court of Appeals for the Ninth Circuit was rendered on June 6, 1990. The Petition for Rehearing was denied on July 27, 1990.

Jurisdiction is founded upon 28 U.S.C. Sections 1254, 1331 and 1343.

STATUTE INVOLVED

The primary statute involved is 42 U.S.C. 1981, which reads as follows:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

STATEMENT OF THE CASE

Petitioner Claude Rodriguez, Jr., has been subjected to a myriad of forms of invidious racial discrimination and arbitrary treatment in violation of 42 U.S.C. Section 1981, and in breach of his employment contract and also constituting an intentional infliction of emotional distress. The original complaint was filed on July 19, 1985. Respondents' answer was filed on September 20, 1985.

Petitioner filed a first amended complaint on November 13, 1985, and Respondents filed an amended answer.

Respondents filed a Motion for Summary Judgment against Mr. Rodriguez on May 22, 1987. Petitioner filed his opposition on June 4, 1987. Respondents filed a reply on June 11, 1989. Respondents' Motion was heard on June 22, 1987. After hearing oral argument, the trial court took the matter under submission. On June 26, 1987, the trial court granted Respondents' Motion for Summary Judgment. On June 6, 1990, the Court of Appeals affirmed the trial court's judgment. On July 27, 1990, the Court of Appeals denied Petitioner's Petition for Rehearing. Jurisdiction in the Court of first instance was founded upon 28 U.S.C. Sections 1331 and 1343.

FACTUAL BACKGROUND

By 1984, Petitioner Claude Rodriguez had attained the level of Eighth Level Assistant Superintendent at Respondent General Motors Van Nuys Plant. The personnel structure at the plant was as follows: the plant manager was the top executive. Next in line were the Personnel Director, Plant Engineer, Quality Control Director, Comptroller, Production Manager and the Material Director. Just below these positions were two General Superintendents. Mr. Rodriguez' General Superintendents were Robert Weatherly and Rich Conrad. Those levels and above were designated unclassified positions. Next were the Eighth Level Superintendents or Department Heads. Mr. Rodriguez' Department Head was Ken Bridges. Under the Superintendents were the Eight Level

Assistant Superintendents. The Seventh Level, the General Supervisors and the Sixth Level Supervisors were the employees who supervised the hourly employees.

On November 4, 1983, Mr. Rodriguez received his first evaluation at the Van Nuys plant. He was given a "3" rating, defined as "highly effective performance," and was given a "B" promotability rating because it was alleged that Mr. Rodriguez needed more training. The assessment was discriminatory because Mr. Rodriguez had worked for three years as a department head at another plant, and for nine years previously as an assistant superintendent with an "A" promotability rating.

Thereafter, Mr. Rodriguez requested a meeting to discuss his promotability, pursuant to Respondent General Motor's "open-door policy." In November, 1983, Mr. Rodriguez met with Robert Sutton, Salaried Personnel Administrator. During the meeting, Mr. Sutton told Petitioner that he did not understand why he had been rated as currently not promotable based upon his experience and his overall record at General Motors. Mr. Sutton told Mr. Rodriguez that he would set up a meeting of the Human Resource Management Committee ("HRMC") to discuss the situation with Mr. Rodriguez.

The meeting with HRMC took place on February 22, 1984. At the meeting, members of the Committee angrily told Mr. Rodriguez that they did not care about his experience at the Mexico City plant, and that he must prove himself at the Van Nuys plant. When Mr. Rodriguez asked the Plant Manager to call the Plant Manager in Mexico to discuss his performance, the manager stated, "I know Dell 'Ario, he worked for me at one time. That little

wop doesn't have the capabilities of being a plant manager, and never will have."

During this period, Petitioner's supervisor, Ken Bridges, constantly threatened Mr. Rodriguez, saying he would be sorry if he pursued the open door policy.

Mr. Rodriguez was treated differently than other Eighth Level Supervisors. Although Petitioner was told that he needed to prove himself at the Van Nuys plant, white employees were given positions as Department Heads at the Van Nuys plant without proving themselves first. Jim Clarke and Earl Ball, both white, were hired as Department Heads without prior experience at the Van Nuys plant.

On June 1, 1984, Mr. Rodriguez wrote a letter to General Motors' Vice-President McDonald. In the letter, he alleged that he was being discriminated against at General Motors. Subsequently, the letter was forwarded to the Van Nuys plant HRMC for a response. Within a month of the HRMC's receipt of Petitioner's letter, on August 14, 1984, Ken Bridges and Dale Matthews gave Mr. Rodriguez a special appraisal, also known as a Performance Improvement Plan ("PIP"), stating that he was not doing his job. Mr. Rodriguez was given a rating of 6, which is defined as "needs much improvement," and is the lowest rating available. The contents of this appraisal are replete with falsehoods. Thus, Petitioner has provided a specific analysis of the pretextual nature of the review in his Motion for Reconsideration.

Thus, Mr. Rodriguez had provided detailed evidence of discrimination and retaliation on the part of Respondents.

REASONS FOR GRANTING THE WRIT

A. The Patterson Decision Does Not Bar Petitioner's Case.

The Court of Appeal suggested in its opinion that in *Patterson v. McLean Credit Union*, 439 U.S. ___, 109 S.Ct. 2363, 105 L.Ed.2d 132 (1989) that the Supreme Court eviscerated all claims of race discrimination in employment. However, the case is actually much more narrow. Only two things are absolutely clear in the wake of *Patterson*: (1) a racially motivated refusal to hire violates § 1981, and (2) a practice of racial harassment, adopted after an employee was hired, does not violate that employee's rights under the statute. Whether other types of discriminatory practices are any longer forbidden by § 1981, and if so, under what circumstances, has yet to be answered by the Supreme Court. Petitioner contends that he has demonstrated facts that survive *Patterson*, including Respondents' discriminatory demotion of Petitioner, their discriminatory failure to promote him and their discriminatory treatment of him in the grievance procedure.

B. Petitioner Has Made A Prima Facie Case Under Patterson.

1. Respondents Violated § 1981 By Failing To Promote Petitioner.

There is no question that claims for the denial of promotion are still viable under *Patterson* The majority opinion held that at least some promotion claims fall within the scope of § 1981.

> [T]he Court of Appeals distinguished between petitioner's claim of racial harassment and discriminatory promotion, stating that although the former did not give rise to a discrete Section 1981 claim, "[c]laims of racially discriminatory . . . promotion go to the very existence and nature of the employment contract and thus fall easily within § 1981's protection" 806 F.2d at 1145. We think that somewhat overstates the case. Consistent with what we have said in Part III, . . . the question whether a promotion claim is actionable under § 1981 depends on whether the nature of the change in position was such that it involved the opportunity to enter into a new contract with the employer. If so, the employer's refusal to enter the new contract with the employee is actionable under § 1981 . . . . Only where the promotion rises to the level of an opportunity for a new and distinct relation between the employee and the employer is such a claim actionable under § 1981. Cf. *Hishon v. King & Spalding*, 467 U.S. 69 (1984) (refusal of law firm to accept associate into partnership) (Title VII).

109 S.Ct. at 2377.

Whether a new contract is involved should be tested by comparing the obligations and rights of the employer or the employees regarding the new and old positions. There would be two critical questions, an affirmative answer to either of which would ordinarily render the promotion claim actionable under Section 1981: (1) in the new position, would the employer be entitled to require the employee to do tasks or work under conditions that could not have been required in the old position?[1] (2) In

[1] The "promotion" claim in *Patterson* apparently involved a change in job title with no alteration in duties. 805 F.2d at 1145.

the new position, is the employer obligated to pay a different salary, or provide some other different form of compensation than for the work involved, whatever it might be? An employment relation is inherently a contractual relation. If an employer's obligation to pay the worker $10 an hour in the new position is contractual, then it must be based on some contract; if the obligation is based on the old contract (the one in effect prior to the promotion), then there *must* be a new, different contract in effect.

One recent lower court decision appears to apply this approach. In *Mallory v. Booth Refrigeration Supply Co.* 882 F.2d 908 (4th Cir. 1989), the Fourth Circuit commented:

> In *Patterson* . . . the Court recently explained that where a "promotion rises to the level of an opportunity for a new and distinct relation between the employee and the employer," a claim of discrimination with respect to a promotion is "actionable under § 1981" . . . Promotion from clerk to supervisor with a consequent *increase in responsibility and pay satisfies this test.*

Mallory v. Booth Refrigeration Supply Co., 882 F.2d at 910. (Emphasis added).

In *Luna v. City and County of Denver*, 718 F.Supp. 854 (D.Colo. 1989), the employer argued that a promotion claim was not actionable under Section 1981 because the new and old positions had a number of overlapping responsibilities. The employee responded with evidence of "substantial differences between the two positions in supervisory responsibility, duties performed, and required qualifications." 718 F.Supp at 856-857. The court held the plaintiff's evidence was sufficient to support a

finding that the promotion involved "a new and distinct contractual relationship" (718 F.Supp. at 857), and that the question of whether such a new contract was involved was a question of fact for the jury. 718 F.Supp. at 857.

C. Respondent's Violated Section 1981 by Demoting Petitioner.

Although the majority opinion in *Patterson* does not deal with this issue, the reasoning of the court supports the view that discriminatory discharges and demotions are still actionable in a Section 1981 case.[2]

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[2] Justice Brennan, in his separate opinion, asserted that the 39th Congress intended section 1981 "to go beyond protecting the freedmen from refusals to contract . . . and from discriminatory decisions to discharge" to reach racial harassment as well. 57 U.S.L.W. at ___. Although the majority expressly disagreed with Brennan's view regarding harassment, it conspicuously avoided any comment about discharges. A week after *Patterson*, in *Jett v. Dallas Independent School District*, ___ U.S. ___, 109 S.Ct. 2702 (1989), the court, in an opinion joined by the *Patterson* majority, "assume[d], without deciding, that petitioner's rights under section 1981 have been violated" by his removal from a job for allegedly racial reasons. Prior to *Patterson* the Supreme Court on five different occasions had assumed that discriminatory discharges were forbidden by section 1981; *Johnson v. Railway Express Agency*, 421 U.S. 454, 459-60 (1975); *McDonald v. Santa Fe Trail Transportation Co.*, 449 U.S. 250, ___ (1976); *St. Francis College v. Al-Khazraji*, 479 U.S. 812 (1987); *Goodman v. Lukens Steel Co.*, 482 U.S. 656 (1987). Nothing in *Patterson* suggests that any of these cases were bad law.

The most important and interesting of the lower court cases is *Padilla v. United Air Lines*, 716 F.Supp. 485 (D.Colo. 1989):

> According to *United*, § 1981 does not apply to this set of facts because plaintiff has alleged discriminatory behavior in post-formation conduct which does not involve the right to make a contract, but rather implicates the performance of established contract obligations and the conditions of continuing employment. *Patterson* is not directly applicable to the present case. First of all, the Court did not say that *termination* of an employee does not involve the formation process. United's argument fails because termination is part of the making of a contract. A person who is terminated because of his race, like one who was denied an employment contract, is without a job. Termination effects the existence of the contract, not merely the terms of its performance. Thus, discriminatory termination directly affects the right to make a contract contrary to § 1981 . . . I hold that Padilla's claim was actionable pursuant to § 1981. Padilla did not simply complain that he was harassed. Padilla's case was based upon the premise that United discriminated against him because of his race by terminating him and by preventing him from obtaining future employment with United.

716 F.Supp. at 489. Fmphasis in original.[3]

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[3] *See, also, Birdwhistle v. Kansas Power and Light Co.*, 723 F.Supp. 570 (D. Kan. 1989), where the district court upheld a § 1981 discharge claim:

> Plaintiff's claims deal only with alleged discrimination in the termination of his employment contract not harassment . . .

(Continued on following page)

A dismissal ordinarily involves *two* contracts – the old contract the employer is terminating, and the new contract which the employer refuses to enter into. This is readily illustrated by a simple example. Suppose that on a Sunday night an employer resolves that it will no longer employ blacks and erects a large sign in front of its business reading "No black Employees in this Office." The next day two blacks show up at the gate, one who previously worked at the plant, and one who is seeking a new position – both of whom are denied work and turned away. It would be bizarre if only the new applicant, but not the dismissed employee, had a claim under Section 1981 – they are both seeking the same thing, employment on Monday, and are both denied it for the same reason.

A § 1981 demotion should be governed by the same principles as a discharge case. A discharge ordinarily reflects two decisions by an employer – to remove the worker from the old position (i.e. to end the old contractual relation) and to not immediately restore the worker to that position (i.e. not to make a new contract for that position). Demotions involve in effect a third contract, for employment at the lower position, but that is no defense to a racially based refusal to contract for the higher

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(Continued from previous page)

> The Supreme Court in *Patterson* was not asked to address, and did not address, whether alleged discriminatory discharge is actionable under . . . section 1981. We believe that discharge is directly related to contract enforcement and thus is still actionable under section 1981 in light of *Patterson*.

723 F.Supp. at 575.

position. Again, if two blacks come to a plant seeking $30,000 a year jobs for which they are well qualified, but are, for racial reasons, given only $15,000 a year jobs, it would be peculiar indeed if § 1981 gave a cause of action only to the new employee but not to the demoted prior employee. This analysis is supported by post-*Patterson* developing case law. In *Gamboa v. Washington*, 50 FEP Cas. 524 (N.D. Ill. 1989), the district court held that a § 1981 claim could be maintained by a plaintiff who alleged he had been "transferred, demoted and suspended because he is Hispanic." 50 FEP Cas. at 524. "[W]ith respect to his § 1981 claim, plaintiff cannot recover for discipline or harassment not amounting to a demotion or a constructive discharge." *Patterson v. McLean Credit Union*, 50 FEP Cas. at 528.

D. Respondents Violated § 1981 by Retaliating Against Petitioner for Filing a Grievance.

The *Patterson* case provides for a retaliation claim under § 1981 when the retaliation takes the form of impeding, on the basis of race, the employee's right to enforce his or her contract rights:

> "[T]he same right . . . to . . . enforce contracts . . . as is enjoyed by white citizens," embraces protection of a legal process and of a right of access to legal process, that will address and resolve contract-law claims without regard to race. In this respect, it prohibits discrimination that invests the legal process in ways that prevent one from enforcing contract rights, by reason of his or her race, and this is so whether this discrimination is attributable to a statute or simply to existing practices. It also covers wholly *private* efforts to impede access to the courts or

> obstruct non-judicial methods of adjudicating disputes about the force of binding obligations . . . . The right to enforce contracts does not however, extend beyond conduct by an employer which impairs an employee's ability to enforce through legal process his or her established contract rights.

57 U.S.L.W. at 4708. (Emphasis in original.)

The quoted passages from *Patterson* refer variously to "the courts," "legal process" and "non-judicial methods." Another passage refers to "any . . . dispute resolution process." 57 U.S.L.W. at 4710. The *Patterson* majority expressly regarded as within the scope of § 1981, union enforcement of labor contracts; that enforcement rarely involves courts or legal processes, and ordinarily consists of negotiation, grievances, and in some instances arbitration. Clearly, then, the *Patterson* retaliation analysis extends to the situation presented in the instant case where Petitioner has been frustrated to enforce his contract rights to equal and non-discriminatory right to promotion.[4]

Overby v. Chevron U.S.A., Inc., 884 F.2d 470 (9th Cir. 1989), is not to the contrary. In that case the appellant alleged he was fired in retaliation for filing an EEOC claim. The plaintiff there "[did] not allege that Chevron

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[4] Because the discriminatory grievance procedure was used by GM to frustrate Petitioner's ability to gain a promotion, Petitioner also states a claim that he has been frustrated in the *making* of a contract because of his race in violation of § 1981.

obstructed his access to courts or any other dispute resolution process." The *Overby* court distinguishes this scenario from the facts in *Goodman v. Lukens Steel Co.*, 482 U.S. 656 (1987), where a union violated § 1981 by refusing to file racial discrimination grievances with the employer. Similarly, in this case, GM expressly guaranteed all employees the contractual right to non-discrimination, but frustrated those rights by *systematically failing to follow the proper grievance procedure*, or merely providing the *pretense of following it*. Like in *Goodman*, GM "in effect, categorized racial grievances as unworthy of pursuit . . . " 482 U.S. at 669, causing Petitioner to be passed over for promotion and demoted.

CONCLUSION

For all of the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

PETER F. LAURA
LAW OFFICES OF LEROY S. WALKER
6300 Wilshire Boulevard, Suite 1455
Los Angeles, California 90048
(213) 658-5943

Attorneys for Petitioner

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CLAUDE RODRIGUEZ, JR.,	)	No. 88-6230
Plaintiff-Appellant,	)	CV 85-4725-AHS
v.	)	(Filed
GENERAL MOTORS CORPORATION, ET AL.,	)	Aug. 15, 1990)
Defendants-Appellees.	)	

APPEAL from the United States District Court for the CENTRAL District of CALIFORNIA

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the CENTRAL District of CALIFORNIA and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the ___ judgment of the said District Court in this Cause, be, and hereby is AFFIRMED.

Filed and entered JUNE 6, 1990

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLAUDE RODRIGUEZ, JR.,	)	No. 88-6230
Plaintiff-Appellant,	)	DC# CV-85-4725-AHS
v.	)	
GENERAL MOTORS CORPORATION, ET AL.,	)	MEMORANDUM*
Defendants-Appellees	)	(Filed June 6, 1990)

Appeal from the United States District Court for the Central District of California Alicemarie H. Stotler District Judge, Presiding

Arged [sic] and Submitted April 11, 1990 Pasadena, California

Before: BROWNING, NOONAN, and FERNANDEZ, Circuit Judges

FACTS

Claude Rodriguez, an Hispanic American, alleges he was given discriminatory evaluations, held to a higher standard than other employees for promotion, and forced to take part in a "performance improvement program" because of his race in violation of 42 U.S.C. § 1981. The district court granted General Motors' (GM) Motion for Summary Judgment without opinion. We affirm.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

Rodriguez worked in GM's Mexico City plant for several years as both a department head and an assistant superintendent. On his evaluations in the Mexico City plant Rodriguez received an "A" promotability rating. In 1983, Rodriguez transferred to the Van Nuys plant. On November 4, 1983 on his first evaluation upon transferring, Rodriguez received a "B" promotability rating, meaning he needed more training before promotion. Rodriguez argues the ratings he received at the Van Nuys plant must have been based on discriminatory reasons in light of his high ratings at the Mexico City plant.

Rodriguez discussed his rating with the Human Resource Management Committee and was informed he must prove himself at the Van Nuys plant before he would be considered for promotion. Rodriguez claims this requirement was also discriminatory because white employees did not have to prove themselves before a promotion. Rodriguez testified he knew of two incidents in which whites were promoted without prior experience at the Van Nuys plant. He also argues that after writing a letter to the company headquarters, his supervisors retaliated against him by putting him in the performance improvement plan and by unfairly evaluating him.

ANALYSIS

Federal Law declares that "All persons . . . shall have the same rights . . . to make and enforce contracts." 42 U.S.C. § 1981. The United States Supreme Court in construing section 1981 has stated that the right to make contracts applied only when a relationship fundamentally changes and "does not extend, as a matter of either logic

or semantics, to conduct by the employer after the contract relation has been established, including breach of the terms of the contract or imposition of discriminatory working conditions." *Patterson v. McLean Credit Union*, ___ U.S. ___, 109 S.Ct. 2363, 2373 (1989) (post-formation conduct is more naturally governed by state contract law and Title VII). The Court went on to state that the second right guaranteed by the statute, the right to enforce contracts, "embraces protection of a legal process, and of a right of access to legal process, that will address and resolve contract-law claims without regard to race." *Id.*

Rodriguez does not assert facts indicating that GM precluded him either from making a contract or from enforcing a contract. He argues that because of his race his employment reviews were biased, he was forced to prove himself before being considered for a promotion when white employees did not have such a burden and he was put into a performance improvement plan because he brought the discriminatory acts to the attention of the corporate headquarters. He makes no assertions that he even attempted to change fundamentally his relationship with GM or that GM obstructed his right to any dispute-resolution process. These facts may indicate Rodriguez was subjected to racial harassment. The Supreme Court, however, has unambiguously determined that such a claim is not actionable under Section 1981. *Patterson*, 109 S.Ct. at 2363; *see also Overby v. Chevron USA, Inc.*, 884 F.2d

470, 472-73 (9th Cir. 1989) (*Patterson* applied retroactively).

AFFIRMED

A TRUE COPY
ATTEST

CATHY A. CATTERSON
Clerk of Court

by: /s/ Ernesto M. Cruz
Ernesto M. Cruz
Deputy Clerk

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

PAUL GROSSMAN
ANDREW C. PETERSON
STEPHEN L. BERRY
PAUL, HASTINGS, JANOFSKY & WALKER
Twenty-Second Floor
555 South Flower Street
Los Angeles, California 90071
(213) 489-4000
Attorneys for Defendants
GENERAL MOTORS CORPORATION, et al.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

(Filed June 3, 1988)

CLAUDE RODRIGUEZ, JR., et al.	)	Case No.
Plaintiffs,	)	CV-85-4725-
	)	AHS (RWRx)
vs.	)	
	)	
GENERAL MOTORS CORPORATION, et al.,	)	
	)	
Defendants.	)	

On June 22, 1987, the Motion for Summary Judgment of defendants, and each of them, in connection with the claims of plaintiff Claude Rodriguez, Jr. came on for hearing before this Court, the Honorable Alicemarie H. Stotler, United States District Judge, presiding. Plaintiff Claude Rodriguez, Jr. appeared and argued through his counsel, Dale F. Myers. Defendants appeared and argued through their counsel, Andrew C. Peterson of Paul, Hastings, Janofsky & Walker.

The Court, having read and considered the moving and responding papers, all supporting papers, and having considered the oral arguments presented, entered an Order on June 25, 1987, granting defendants' summary judgment motion as to each and every claim for relief of plaintiff Claude Rodriguez, Jr., contained in plaintiffs' complaint, and each cause of action thereof, on the ground that there is no triable issue of material facts and that defendants are entitled to judgment as a matter of law.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Judgment is entered in favor of defendants, and each of them; and

2. Plaintiff Claude Rodriguez, Jr. is to take nothing and defendants are to recover from plaintiff Rodriguez their costs of suit herein.

DATED: June 2, 1988

/s/ Alicemarie H. Stotler
Honorable Alicemarie H. Stotler United States District Court Judge

Presented By:

PAUL, HASTINGS, JANOFSKY & WALKER
By /s/ Stephen L. Berry
Stephen L. Berry

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 555 South Flower Street, 22nd Floor, Los Angeles, California 90071

On June 1, 1988, I served the foregoing document(s) described as

[PROPOSED] JUDGMENT

on the interested parties in this action be placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Leroy S. Walker, Esq.
Law Offices of Leroy S. Walker
6300 Wilshire Boulevard, Suite 1455
Los Angeles, California 90048

STATE

[ ] (BY MAIL) I deposited such envelope with postage thereon fully prepaid in the United States mail at a facility regularly maintained by the United States Postal Service at ___, California.

[ ] (BY PERSONAL SERVICE) [ ] By personally delivering copies to the person served.

[ ] I delivered such envelope by hand to the offices of the addressee pursuant to CCP § 1011.

[ ] I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on ___, 19___ at ___, California.

FEDERAL

[XX] (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at a facility regularly maintained by the United States Postal service at Los Angeles, California.

[ ] (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the office of the addressee.

[XX] I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed on June 1, 1988 at Los Angeles, California.

Linda Cathy Halpern
Type or Print Name

/s/ Linda Cory Holze
Signature

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 85-4725-AHS Date November 2, 1987

Title Claude Rodriguez, Jr. -v- General Motors Corp., et al

DOCKET ENTRY

PRESENT:

HON. ALICEMARIE H. STOTLER, JUDGE

Helena G. Fagan
Deputy Clerk

Freda Mendelsohn
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Leroy S. Walker
Mickey Wheatley

ATTORNEYS PRESENT FOR DEFENDANTS:

Stephen L. Berry

PROCEEDINGS: HRG: PLTF CLAUDE RODRIGUEZ'S MOT FOR RECONSIDERATION

Counsel present & hearing held. Counsel argue. Crt denies pltf's motion & rules in accordance with tentative ruling attached hereto.

Counsel for deft to prepare, serve & lodge order pursuant to Local Rule 14.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE ALICEMARIE H. STOTLER, JUDGE, PRESIDING

TENTATIVE RULING* on LAW & MOTION MATTERS

November 2, 1987 Calendar No. 2

CASE: Claude Rodriguez, Jr., et al. v. General Motors Corporation, et al.

CV 85-4725 AHS

MOTION(S) PENDING: Plaintiff Claude Rodriguez, Jr.'s Motion for Reconsideration

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1. The Court denies plaintiff Claude Rodriguez, Jr.'s motion for reconsideration.

2. Rule 60(b) provides for relief from final judgments. Summary judgment as to fewer than all the parties in a case does not constitute a final judgment, Fed. R. Civ. P. 54(b), so it is not subject to review under Rule 60(b). *Gagne v. Carl Bauer Schraubenfabrick, GmbH*, 595 F. Supp. 1081, 1083 (D. Me. 1984); *Vaughn v. Regents of University of California*, 504 F. Supp. 1349, 1351 (E.D. Cal. 1981). Even if Rule 60(b) were applied, however, the result would not change.

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* If all counsel submit for ruling on this Tentative Ruling and notify the Courtroom Deputy Clerk immediately, this Tentative Ruling will become the Court's Minute Order. After all appearances and submissions have been noted by the Clerk, the matter will not be called and there will be no need to remain. The prevailing party shall prepare, serve, and lodge the Court's formal Order or Judgment unless otherwise ordered in this Ruling. Local Rule 14.1.

3. Local Rule 7.16 governs plaintiff's motion for reconsideration. Rodriguez has not shown a material change in fact or law that would justify reconsideration of the Court's Order granting summary judgment against him. The evidence that plaintiff now offers could and should have been known at the time the Court decided defendants' motion for summary judgment. Local Rule 7.16(a).

4. Furthermore, the "new" evidence does not constitute a material change in facts (Local Rule 7.16(b)) because it does not justify an inference of racial discrimination. Finally, *California Architectural Building Products, Inc. v. Franciscan Ceramics, Inc.*, 818 F.2d 1466 (9th Cir. 1987), did not change the law regarding plaintiff's burden in resisting summary judgment. It merely restated rules announced by the Supreme Court in 1986. *See Celotex Corp. v. Catrett*, 477 U.S. 317, ___, 106 S. Ct. 2548, 2552-53, 91 L. Ed. 2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, ___, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, ___, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEAL

FOR THE NINTH CIRCUIT

CLAUDE RODRIGUEZ, JR., Plaintiff-Appellant, v. GENERAL MOTORS CORPORATION, ET AL., Defendants-Appellees.	)	No. 88-6230 DC# CV-85-4725-AHS ORDER (Filed July 27, 1990)

Before: BROWNING, NOONAN, and FERNANDEZ, Circuit Judges

The petition for rehearing is hereby DENIED.